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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

Nos. 499, 500

BROTHERHOOD OF RAILROAD TRAINMEN, *Petitioner*,

v.

CERTAIN CARRIERS REPRESENTED BY THE EASTERN, WESTERN & SOUTHEASTERN CARRIERS CONFERENCE COMMITTEES, ETC., *Respondents*.

PETITIONER'S REPLY TO OPPOSITIONS TO PETITIONS FOR CERTIORARI

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Respondents' briefs give additional evidence of the importance of a determination by this Court of the validity of awards of Special Boards of Adjustment to which Arbitration Board 282 delegated substantially all of the arbitration of the crew-consist issue required by Public Law 88-108.

If the rulings of the Court below in *Akron & Barberton Belt R. Co., et al.* v. *Brotherhood of Railroad Trainmen* (referred to at page 9 of Respondents' Opposition in No. 500) become final and the changes in

crew consist which were authorized by Special Board awards continue until again changed in accordance with the Railway Labor Act, and if the information given by counsel for the United States is correct (Br. 7 in No. 500) that practically none of the special boards kept a stenographic record [as required by § 4 of Public Law 88-108 and § 7 Third (g) of the Railway Labor Act], it is most certainly of great importance to the railroads and the thousands of railroad employees, who work under those special board awards which changed their working conditions, for this Court to determine the question as to the validity of those rules to which those men have been, are, and may continue to be subject in their day by day work for an indefinite time in the future.

The importance of this Court determining the question is further magnified by the vacillating and conflicting opinions of Arbitration Board 282 and of the Courts below as shown in the petitions filed herein, the last of which decisions, by the Court below, would foreclose a determination of the validity of those Special Board awards after another panel of the Court below had, as it now appears, teased petitioner and the railroad employees represented by petitioner by leading them to believe in *Brotherhood of Railroad Trainmen* v. *Chicago, Milwaukee, St. Paul & Pacific R. Co., et al.*, 345 F.2d 985 (1965) and *Brotherhood of Railroad Trainmen* v. *Certain Carriers, etc.*, 349 F.2d 207 (1965) that the validity of the awards would be determined by the courts after initial review by Arbitration Board 282. In the last mentioned case the carriers argued, as they did in these cases, that the judgment in the original impeachment suit was *res judicata*, and the Court, *sub silentio*, rejected that argument at that time and remanded the case for further proceedings.

If anything is *res judicata,* it would seem that the decision in 349 F.2d 207 should be *res judicata* that the decision in the original impeachment suit was not *res judicata* that the provisions of sections 7 and 8 of the Railway Labor Act do not apply to the proceedings of the Special Boards.

Respondents incorrectly argue (Br. 10 in No. 500) that petitioner does not contend that the ruling by Arbitration Board 282, purporting to excuse its delegee, the Special Board of Adjustment, from taking evidence under oath and making and certifying a transcript of its proceedings and of the evidence taken by it, was not a reasonable interpretation of its award. Petitioner does contend that such ruling by Board 282 and similar rulings by the Courts below were contrary to Public Law 88-108. Surely such a ruling would be "unreasonable" if it is in violation of the law.

Cases arising under the Administrative Procedure Act, such as *United States* v. *Tucker Truck Lines,* cited by the Court below and Respondents (Br. 10 in No. 500) are not relevant to this case. Public Law 88-108 required arbitration and required that it be conducted pursuant to §§ 7 and 8 of the Railway Labor Act and that it be subject to § 9 of that Act. Public Law 88-108 made no mention of the Administrative Procedure Act, but, instead, using mandatory language, provided for the arbitration to be conducted pursuant to the mandatory provisions of §§ 7, 8, and 9 of the Railway Labor Act—not the Administrative Procedure Act.

There is no inconsistency between § 4 of Public Law 88-108 and the Award of Arbitration Board 282 and those subsections of §§ 7, 8, and 9 of the Railway Labor Act as to *how* the arbitration should be conducted.

Section 4 of Public Law 88-108 provided that: "To the extent not inconsistent with this joint resolution, the arbitration shall be conducted pursuant to Sections 7 and 8 of the Railway Labor Act, the board's award shall be made and filed as provided in said sections and shall be subject to section 9 of said Act."

Only sub-sections Third (b), (f), (g), and (h) of § 7 of the Railway Labor Act are concerned with the *conduct* of an arbitration.

The Award of Arbitration Board 282 required the parties to the Special Board, for which it provided and to which it delegated the arbitration, to share the expenses of the neutral member, while § 7 Third (e) of the Railway Labor Act provides for the neutral to be paid by the National Mediation Board. That is the only inconsistency between the Award of Arbitration Board 282 and § 7 of the Railway Labor Act.

Surely that single inconsistency, having nothing to do with the actual conduct of an arbitration, should not have been a warning to petitioner in 1963 when it was required to institute an action to contest the validity of the Award of Board 282 that the Award could or should have been considered invalid because it did not expressly require a Special Board of Adjustment to comply with § 7 Third (b) which requires an arbitration board to give the parties a full and fair hearing including an opportunity to present evidence in support of their claims, either in person or by counsel, nor because it did not expressly require a Special Board of Adjustment to comply with that part of § 7 Third (h) which requires an arbitration board to take all testimony under oath, nor because it did not expressly require a Special Board to comply with that part of § 7 Third (g) which authorizes an arbitration

board to employ and pay assistants necessary to carry on the arbitration which could have been done consistently with the Award of Board 282, nor because the Award of Board 282 did not expressly require the Special Board of Adjustment to comply with that part of § 7 Third (f) which requires an arbitration board to make, certify, and file a transcript of its proceedings, of the evidence taken by it, and its award.

While the Award of Board 282 was silent as to those matters last mentioned, § 4 of Public Law 88-108 and § 7 of the Railway Labor Act were clear and mandatory as to them.

But the Court below ruled *res judicata* the question of whether the Special Boards were required to comply with those last mentioned requirements of § 7 of the Railway Labor Act on the theory that the Award of Board 282 would have been subject to impeachment by not expressly requiring compliance with them, notwithstanding § 4 of Public Law 88-108 did impose such requirements and notwithstanding no special boards could have then been convened so as to have conducted the arbitration delegated to them in compliance with or in violation of those requirements.

Petitioner's complaint has nothing to do with the validity of the Award of Arbitration Board 282. The complaint which petitioner makes could not have been made in December of 1963 when petitioner was required to institute an action to contest the validity of the Award of Board 282 except as a bare speculative possibility that the special boards would proceed in violation of the provisions of § 4 of Public Law 88-108 and §§ 7, 8, and 9 of the Railway Labor Act because the Award of Board 282 was silent as to whether they should so proceed.

Petitioner's complaint is and has been exclusively with respect to the validity of the awards of Special Boards of Adjustment, delegees of Board 282 which were not, as they could not have been, established until months after petitioner was required by § 4 of Public Law 88-108 and § 9 of the Railway Labor Act to institute an action, if any was to be instituted, to contest the validity of the Award of Board 282 and is based upon the failure of special boards to comply with § 4 of Public Law 88-108 and §§ 7, 8, and 9 of the Railway Labor Act in conducting the arbitration delegated to them as Arbitration Board 282 itself was required to and had done months before any special board was or could have been established.

Respectfully submitted,

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